

subject should be submitted to a jury. A year after the commission has passed an order authorizing the construction and operation of a railroad, it may not by suspending that order stop condemnation proceedings actually pending; order of commission held not intended to interfere with such proceedings. The commission has the power, subject to a review by the courts, under this section to determine whether a railroad shall cross a public highway at, above or under grade. It is better to secure the approval of the commission under this section before the court passes an order authorizing the condemnation, and it should at least be inquired into before the appraisers are appointed under the act of 1912, chapter 117—see article 33A. *Hyattsville v. W., W. & G. R. R. Co.*, 122 Md. 671. And see *Hyattsville v. W., W. & G. R. R. Co.*, 124 Md. 578.

This section is very broad and it is necessary to obtain the approval of the commission in order to exercise the right given by section 306, the action of the commission being subject to the provisions of section 423 (see sections 457 and 458). *City & Sub. R. R. Co. v. W., W. & G. R. R. Co.*, 122 Md. 656.

This section referred to in construing the act of 1912, chapter 117—see notes to article 33A, section 1. *Hyattsville v. W., W. & G. R. R. Co.*, 124 Md. 578.

1910, ch. 180, sec. 27 (p. 369). 1918, ch. 408, sec. 27.

439. A common carrier, railroad corporation, street railroad corporation, or other corporation subject to the provisions of this sub-title, organized or existing, or hereafter incorporated, under or by virtue of the laws of the State of Maryland, may issue stocks, bonds, notes or other evidence of indebtedness, payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of its facilities, or for the improvement or maintenance of its service, or the discharge or lawful refunding of its obligation, or when necessary or desirable, in the discretion of the commission, to cause the aggregate capitalization to conform to the fair value of the property of such corporation as established by the commission pursuant to the provisions of section 442; provided, and not otherwise, that there shall have been secured from the commission an order authorizing such issue, and the amount thereof, and stating that, in the opinion of the commission, the use of the capital to be secured by the issue of such stocks, bonds or other evidence of indebtedness is reasonably required for the said purposes of the common carrier, railroad corporation, street railroad corporation, or such corporations, but this provision shall not apply to any lawful issue of stock, to the lawful execution and delivery of any mortgage, or to the lawful issue or bonds thereunder, before the time when this sub-title becomes a law. For the purpose of enabling it to determine whether it should issue such an order the commission shall make such inquiry or investigation, hold such hearings, and examine such witnesses, books, papers, documents or contracts as it may deem of importance in enabling it to reach a determination. Such common carrier may issue notes for proper corporate purposes, and not in violation of any provision of this or any other act, payable at periods of not